IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA, 1928

CRP.No. 452 of 2006(G)

AGAINST THE ORDER DATED 26/05/2006 IN EP 153/03 IN OS.95/2001 of I ADDL.SUB COURT, KOZHIKODE

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REVN. PETITIONER: 2ND RESPONDENT:

SUNIL KUMAR KETAYI,
`VYSALI GARDENS', CHEVAYOOR AMSOM, DESOM,
KOZHIKODE.

BY ADV. SRI.A.SUDHI VASUDEVAN

RESPONDENTS: PETITIONER/RESPONDENTS 1 & 3:

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1. SREE GANESH BANKERS,
REP. BY MANAGING PARTNER K.E.SURESH BABU,
PUTHIYANGADI VILLAGE, EDAKKAD DESOM, KOZHIKODE.

2. K. PRADEEP KUMAR,
`VYSALI GARDENS', CHEVAYOOR AMSOM
DESOM KOZHIKODE.

3. R.M. SUSANTH KUMAR,
PREMIER HOUSE, KASABA AMSOM DESOM, KOZHIKODE.

BY ADV. SRI.V.K.BALACHANDRAN
SRI.LATHEESH SEBASTIAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P452/06

ORDER ON I.A.1790/06 IN C.R.P.452/06

DISMISSED

3.01.07. SD/-M.SASIDHARAN NAMBIAR, JUDGE.

M.SASIDHARAN NAMBIAR,J.

C.R.P.NO.452 OF 2006

DATED THIS THE 3rd DAY OF JANUARY, 2007

ORDER

First respondent is the decree holder and second respondent, the judgment debtor in O.S.95/01. The suit was filed for realisation of the amount due from second respondent. In the suit, I.A.1685/01 was filed under Order XXXVIII Rule 5, for an order of attachment before judgment. A conditional order of attachment was passed. According to petitioner, though an order was passed, the order was not effected. Subsequently, the suit was decreed. First respondent filed E.P.153/03 for realisation of the decree debt by sale of the property of judgment debtor. In the execution petition, petitioner and third respondent were impleaded as per orders in E.A.1268/04 on 11.8.05. In the execution petition, first respondent sought attachment of the property, which was the same property, which was the subject matter of attachment in I.A.1685/01. Executing Court passed a fresh order of attachment with a direction to serve copy to petitioner as well as third respondent. This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure contending that no notice was received by petitioner before order of attachment was passed on 26.5.06 and the amended copy of

the execution petition was also not served on him and the property attached by the order was sold by second respondent even before the institution of the suit and therefore the property cannot be attached and so the order is to be quashed.

2. Learned Counsel appearing for petitioner and respondents were heard.

3. The question whether the order of conditional attachment passed at the trial stage in I.A.1285/01 was effected or not is to be decided by the executing Court and cannot be decided by this Court in this petition. So also if the property was alienated by second respondent, even before the institution of the suit as claimed by petitioner, by the order of attachment passed either in I.A.1685/01 or by the order passed in execution petition, rights of the assignee of second respondent will not be effected . That is a matter to be decided by the executing Court.

4. The grievance of petitioner was that he was not granted an opportunity to file any objection before order of attachment was passed. In view of the fact, the order of attachment has already been passed, petitioner is granted an opportunity to raise all objections before the executing Court. Before directing sale of property, executing Court shall decide whether second respondent judgment debtor had a subsisting right over the attached property on the date of order of attachment and whether petitioner has a

right over that property.

Executing Court is to decide the question expeditiously and at any rate within two months from the date of receipt of a copy of this order.

M.SASIDHARAN NAMBIAR,JUDGE

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